

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1083

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

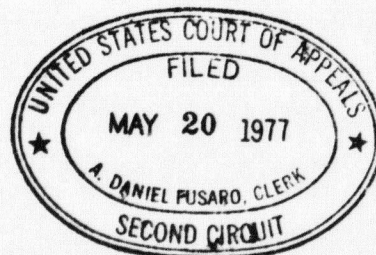
CARMELLO SANSONE, a/k/a
"Michel",

Defendant

ORIGINAL

Docket No. 77-1083

APPELLANT'S APPENDIX



STUART R. SHAW

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PAGINATION AS IN ORIGINAL COPY

APPENDIX TABLE OF CONTENTS

	<u>PAGE</u>
1. Index on appeal	A1
2. Docket sheet of defendant Sansone	B1 - B2
3. Indictment	C1 - C3
4. Charge to Jury	D1 - D30
5. Witness List supplied by government on November 5, 1976	E1 - E2
6. Notice of Motion and Affidavit for an Order appointing an Italian or French speaking psychiatrist to examine the defendant on the issue of competency	F1 - F3
7. Order Pursuant to 18 U.S.C. Sec. 4244	G1 - G2
8. Report of psychiatrist dated December 24, 1976	H1 - H2
9. Letter from Stuart R. Shaw to Judge Lasker dated December 30, 1976	I1 - I2

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

V.

FRANK JOSEPH FUENTES
CARMELO SANSONE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK

CASE NO. 76 CR 835

JUDGE: FRANKEL
LASKER

INDEX TO THE RECORD ON APPEAL

DOCUMENTS

Certified copy of docket entries

A-D

INDICTMENT FILED 76 CR 835 SDNY

1

FILED MAGISTRATE'S PAPERS 9/7/76

2

FILED GOV'T BILL OF PARTICULARS

3

FILED TRANSCRIPT OF RECORD OF
PROCEEDINGS DATED 9-17-76

4

FILED DFTS. REQUESTS TO CHARGE

5

FILED GOVTS. SUPPLEMENTAL REQUESTS
TO CHARGE

6

FILED ORDER THAT DR. STANLEY
PORTNOW, A PSYCHIATRIST, BE EMPLOYED
TO EXAMINE dft. as indicated,

7

FILED DFT. NOTICE OF MOTION &
SUPPORTING AFFIDVT. FOR AN ORDER
TO APPOINT PSYCHIATRIST OF ITALIAN
OR FRENCH SPEAKING TO EXAMINE DFT

8

FILED DEFTS MEMORANDUM IN SUPPORT
OF MOTION TO APPOINT PSYCHIATRIST,

9

FILED JUDGMENT AND COMMITMENT
ORDER - DEFENDANT FUENTES

10

FILED JUDGMENT AND COMMITMENT
ORDER - DEFENDANT SANSONE

FILED DEFT. FUENTES NOTICE OF APPEAL

FILED DEFT. SANSONE'S NOTICE OF APPEAL

FILED MAG. JACOBS TEMP. COMMITMENT
DEFT. FUENTES

14

FILED MAG. JACOBS TEMP. COMMITMENT
DEFT. SANSONE

15

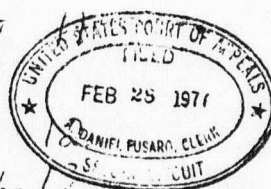
CLERK'S CERTIFICATE

16

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AI

77-1082



11-19-76

Filed transcript of record of proceedings, dated 11-17-76

11-9-76

Dfts. Carmello Sansone pres. w/atty. Stuart Shaw, U.S. Atty. Michael Carey present. - Trial begun. Jury selected....Lasker J.

11-10-76

Trial Cont'd

11-22-76

" " & concluded Dft. Carmello Sansone Guilty on Count 1 & 2 - Dft. remanded to custody. Sentences set for Jan. 10, 1977 At 10 AM.....Lasker J.

12-2-76

Filed Dfts. Requests to Charge.

12-2-76

Filed Govts. Supplemental Requests to charge.

12-16-76

Filed CJA 21 Copy 2 Approving payment to Julie Sayers, 240 West End Ave. Apt. 8C NYC 10023 as interpreter.....dtd. 11-18-76....Lasker J.

12-16-76

Filed CJA 21 Copy 5 Appointing Julie Sayers, 240 West End Ave., Apt. 8C NYC 10023 as interpreter.....dtd. 11-18-76....Lasker J.

12-17-76

Filed Dft. Notice of Motion & supporting affidvt. for an order to appoint psychiatrist of Italian or French speaking to examine dft....Ret. 1-4-77.

12-17-77

Filed Dfts. Memorandum in support of motion to appoint an Italian or French Psychiatrist to make a determination of competency.

1-6-77

Filed Memo. End. on motion dtd 12-17-76. Motion Denied. The report of Dr. Portnow suggests no reason for further examinations.Lasker J. (mailed notice)

1-17-77

Filed Judgment & Commitment (Atty. Stuart Shaw Present) The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of TEN (10) YEARS on Counts 1 & 2, the said sentences to run concurrently & not consecutively. The dft. shall serve a Special Parole Period of SIX (6) YEARS as a multiple felony offender.....Lasker J. Issued Commitment 1-23-77.

1-25-77

Filed Dfts. Notice of Appeal from Sentence (Jury Verdict) on 1-17-77. (mailed notice)

2-26-77

Filed Mag. Jacobs. Temp. Commitment.

A TRUE COPY
RAYMOND F. BURGHARDT - Clerk
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA :

- v - :

FRANK JOSEPH FUENTES, :
and CARMELLO SANSONE, :
a/k/a "Michel", :

Defendants. :

INDICTMENT

76 Cr.

----- X
COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of May, 1976 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, FRANK JOSEPH FUENTES and CARMELLO SANSONE, a/k/a "Michel," the defendants and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about the 28th day of May, 1976, in the Southern District of New York, FRANK JOSEPH FUENTES, the defendant, gave to another individual approximately .36 grams of cocaine in the vicinity of 9th Avenue and 44th Street, New York, New York, as a sample of the future sale of 3 kilograms of cocaine.

C1

2. On or about the 4th day of June, 1976, in the Southern District of New York, CARMELLO SANSONE, a/k/a "Michel," the defendant, met with an agent of the Drug Enforcement Administration in the vicinity of the Market Diner, 43rd Street and 11th Avenue, New York, New York, and had a conversation concerning the sale of approximately 1/2 kilogram of cocaine.

3. On or about the 4th day of June, 1976, in the Southern District of New York, CARMELLO SANSONE, a/k/a "Michel", and FRANK JOSEPH FUENTES, the defendants, met with another individual in the vicinity of 106th Street between Lexington Avenue and 3rd Avenue, New York, New York, and sold that individual approximately 1/2 kilogram of cocaine for \$20,000.

4. On or about the 4th day of June, 1976 in the Southern District of New York, CARMELLO SANSONE, a/k/a "Michel," the defendant, gave another individual approximately \$1,300 as his commission for the sale of approximately 1/2 kilogram of cocaine in the vicinity of 106th Street between Lexington Avenue and 3rd Avenue, New York, New York.

5. On or about the 15th day of June, 1976, in the Southern District of New York, CARMELLO SANSONE, a/k/a "Michel," the defendant, had a conversation with an agent of the Drug Enforcement Administration in the vicinity of 43rd Street and 11th Avenue, New York, New York concerning the future sale of French heroin.

6. On or about the 18th day of June, 1976, in the Southern District of New York, CARMELLO SANSONE, a/k/a "Michel," the defendant, gave an agent of the Drug Enforcement Administration approximately 1.45 grams of cocaine in the vicinity of 108th Street and Riverside Drive, New York, New York, as a sample of the future sale of 1 pound of cocaine.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On or about the 4th day of June, 1976 in the Southern District of New York, FRANK JOSEPH FUENTES and CARMELO SANSONE, a/k/a "Michel," the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 515.97 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B)) and Title 18, United States Code, Section 2.)

FOREMAN _____

ROBERT B. FISKE, JR. _____
United States Attorney

1 cs10

2 THE COURT: Mr. Shaw, I don't see how you can
3 leave under the circumstances. You will have to get
4 someone else to place you. Mr. Sansone will have to be
5 represented by somebody.

6 MR. SHAW: You are absolutely correct, your
7 Honor. On Friday I explained the circumstances to
8 Judge Lerner but he had me pick a jury. If I don't
9 return there this afternoon I'll be in contempt.

10 THE COURT: I'm sorry to put you in that
11 position, but maybe you can get some other counsel to take
12 your place and substitute counsel. I will endeavor
13 to keep him advised as completely as possible, but I
14 can't do that if nobody is here.

15 MR. SHAW: Yes, your Honor, I will endeavor to
16 do that as quickly as possible.

17 (Jury present at 9.55 a.m.)

18 THE COURT: Good morning.

19 I'm read to proceed now with my instructions
20 to you as to the law in this case.

21 Ladies and gentlemen, like everything else in
22 life the law, I'm afraid, has gotten more complicated than
23 it was in the simple days when a kindly old judge could sit
24 up on the bench and just tell the jurors what it was all
25 about. For that reason and because the charges in cases

1 csll

2 of this kind are serious ones, the practice of this Court
3 and most judges today is to put their charges into
4 writing.

5 I mention that for two reasons:

6 First of all, to apologize because I would much
7 rather talk to you directly as I'm doing at the moment and,
8 secondly, to caution you that if I should be reading too
9 fast for you to understand the very substantial importance
10 of what I'm saying, I ask you to raise your hand I will
11 reduce my rate of reading. I hope that won't be a
12 problem.

13 Ladies and gentlemen, I do ask for your
14 complete attention to what I'm about to tell you.

15 Now that you have heard the testimony and the
16 arguments of counsel, the time has come to instruct you
17 as to the law governing the case.

18 You have been chosen and sworn as jurors in
19 this matter to try the issues presented by the allegations
20 of the indictment, and on your determination of the facts,
21 and I stress the words "your determination" to decide
22 under the law, as I shall instruct you, whether the Govern-
23 ment has proven any of the charges of the indictment against
24 any of the defendants beyond a reasonable doubt.

25 I will discuss those charges with you in detail

1 cs12

2 in a moment, but before that I want to give you a few
3 more preliminary and general instructions.

4 First, you are to perform your duty as jurors
5 without bias or prejudice to or for anybody, whether the
6 Government or either of the defendants. The law does
7 not permit jurors, and you wouldn't want it to permit
8 jurors to be governed either by sympathy or swayed by
9 prejudice or public opinion.

10 In that connection I want to point out that
11 although this case involves narcotics, the subject matter
12 of this case has nothing to do with your deliberations
13 except that as one of the facts you must find as to the
14 substantive counts that indeed what was possessed was
15 narcotics, but you do not find a man guilty or not guilty
16 because of the nature of the charge. You only find
17 him guilty if the Government proves the element of the
18 offense which I will specify for you hereafter beyond a
19 reasonable doubt.

20 Second, we start with the proposition that we
21 started with at the outset of the trial, that is, that the
22 law presumes every defendant to be innocent against every
23 charge that is made.

24 You will recall that when you were selected
25 I specifically asked each one of you if you could enter

1 csl3

2 into the discharge of your duties presuming each defendant
3 to be innocent unless and until proven guilty beyond a
4 reasonable doubt after your own deliberations and each of
5 you gave me the answer "Yes".

6 This presumption of innocence alone is
7 sufficient to acquit any defendant unless and until you
8 as jurors have unanimously satisfied yourselves beyond a
9 reasonable doubt of that particular defendant's guilt
10 on that particular charge.

11 Now, the burden or responsibility is on the
12 Government to prove a defendant guilty beyond a reasonable
13 doubt of every essential element of each crime charged,
14 and I will advise you later just what these elements are.

15 Third, I want to remind you of what I
16 mentioned at the outset of the trial, that is, that the
17 existence of the indictment does not constitute evidence
18 against either defendant but is merely a method of bringing
19 a charge. The indictment in this case contains two
20 counts, as you know. Each count contains a separate
21 crime and each of the charges must be considered
22 separately.

23 Equally important is the observation that the
24 indictment names two defendants.

25 In the determination of innocence or guilt, you

1 cs14

2 must bear in mind that determination is personal. The
3 guilt or innocence of the defendant on trial before you
4 must be separately determined with respect to him solely
5 on the evidence presented against him or the lack of
6 evidence.

7 The case of each defendant stands or falls upon
8 the proof or lack of proof of the charge against that
9 defendant and not against someone else.

10 Now, I have said and the lawyers have said
11 many times throughout the case that the Government has
12 assumed the responsibility of proving each defendant guilty
13 beyond a reasonable doubt. Let me define that important
14 term for you at the outset.

15 A reasonable doubt is not a vague, speculative
16 or imaginary doubt. It is a doubt which, as the phrase
17 suggests, is based upon reason and which comes either from
18 the evidence or from the lack of evidence. It is a doubt
19 which a reasonable man or woman might entertain. It is
20 a doubt, and I think this is the best definition, which
21 would cause reasonable men or women like yourselves to
22 hesitate to act in connection with matters that are of
23 importance in your own private lives.

24 Let us say you have an important decision to
25 make. How do you go about making that decision? You

1 csl5

2 think about everything you know about it and you think
3 about everything you want to know and haven't been told,
4 and you say to yourselves:

5 Do I have enough information, do I have enough
6 dependable information so I'm ready to act? If you say
7 "I don't have enough," then you have a reasonable doubt.
8 If you say "I do," then you may proceed. A mere suspicion
9 can't justify conviction. Suspicion is no substitute
10 for evidence, nor is it sufficient to convict if you find
11 that the circumstances merely render the guilt of a
12 defendant probable. The law does not deal in
13 probabilities.

14 On the other hand, in saying that the Government
15 must prove a case beyond a reasonable doubt, if there is to
16 be a conviction, I do not mean that the Government is
17 required to prove guilt beyond all possible doubt. Indeed,
18 in human affairs it is hard to think of anything we can
19 prove beyond all possible doubt with the exception of
20 mathematical propositions, but the proof must be of such
21 convincingly character that you would be willing to rely
22 and act on it in the most important decisions of your own
23 affairs.

24 The evidence in this case, as I have told you
25 a number of times, consists of the testimony of witnesses,

1 cs16

2 the exhibits which have been received in evidence and
3 facts which have been stipulated or agreed to by counsel.
4 You have to decide the case based solely on the evidence,
5 but in your consideration of the evidence you are not
6 limited to the bald statement of the witnesses here or
7 of any witnesses in any trial. By using the word "bald"
8 I don't mean to suggest anything about the character of
9 the testimony, but I mean you are entitled to and you
10 are obliged to think about the mere words that were
11 uttered.

12 In deciding the many questions before you,
13 it is your job to determine credibility of the witnesses
14 who have testified.

15 How do you go about that? Perhaps the best
16 answer is to say tht you determine the truthfulness or
17 accuracy or weight to be given to a witness' testimony in
18 the same way you determine questions in your own personal
19 affairs. We are all constantly called upon from day-
20 to-day to determine how much confidence we place in the
21 statements people make to us. The truthfulness or
22 dependability of a witness as that of any person can be
23 determined by his demeanor, his look, his relationship
24 to the case and to the parties, the possibility of his
25 being biased or of his not being biased or impartial;

1 cs17

2 the stake he may have in the outcome of the case, the
3 reasonable or unreasonableness of his statements, the
4 strength or weakness of his recollection, and the extent
5 to which what he has said has either been corroborated or
6 contradicted by testimony of other witnesses or by exhibits
7 or stipulations.

8 In ordinary life when you made to determine
9 the truthfulness of a person you ask yourselves, don't you,
10 as you do here, did he impress you? Did his version
11 seem straightforward and candid? Did he seem to be
12 trying to hide some of the facts, or did he have any
13 motive to testify falsely, or no motive?

14 Now, ladies and gentlemen, in the summation
15 of counsel reference has been made to the presence or non-
16 presence of the informant Hugo. I advise you in that
17 connection that counsel for the defendants did not have
18 available to them the address or whereabouts of the
19 informant Hugo at any time before or during the trial and
20 that the Government has not had such information since
21 November 5, 1976, which I believe is shortly before this
22 trial commenced, and at present Hugo is unavailable to
23 both the defendants and the prosecutor. On this point I
24 instruct you that you may draw such inferences that are
25 reasonable in the circumstances from the facts that I have

1 cs18

2 just advised you.

3 Ladies and gentlemen, as I have told you, your
4 determination in this case must be based on the evidence.

5 Now, there are two types of evidence to which
6 we normally refer. I'm sure you have heard them spoken
7 of often. One is called direct evidence, that is, the
8 evidence of an eyewitness or an ear witness. "I have
9 heard it," such a witness would say, or "I have seen it
10 myself."

11 The other is more indirect and is generally
12 called circumstantial evidence. Circumstantial evidence
13 is defined as the proof of a chain of events or circum-
14 stances which itself points to the existence or non-
15 existence of facts as to which there was no eyewitness
16 or ear witness.

17 The law makes no distinction as to the
18 importance or weight to be given to circumstantial as
19 distinct from direct evidence. It requires only that
20 you, the jury, find the facts in accordance with the
21 evidence in the case, both direct and circumstantial,
22 beyond a reasonable doubt, of course.

23 An example, by the way, of the difference
24 between circumstantial and direct evidence which is often
25 given to jurors but which is vivid, I think, is as

1 csl9

2 follows:

3 If you looked out the window, if you could,
4 in this courtroom and noticed that it was raining or
5 snowing, that would be direct evidence of the fact. On
6 the other hand, if all the blinds were drawn, as they are
7 here, and somebody came through the door of the courtroom
8 with a dripping umbrella, that would be pretty good
9 circumstantial evidence that it was raining or snowing
10 outside. You wouldn't have seen it with your own eyes,
11 but you would have the right to infer seeing a man come
12 through the door with a dripping umbrella that it was
13 raining outside. To be sure, he might have been standing
14 in the shower in one of the rooms of this building that
15 have a shower, but that would be a little unlikely, and
16 the other inference would be the more normal one.

17 Now, ladies and gentlemen, the United States
18 Attorney and defense counsel have from time to time
19 throughout the course of the trial objected to the intro-
20 duction of evidence or addressed arguments to the bench.
21 It is the duty of attorneys on both sides to make such
22 objections when the attorney believes that the other side
23 is proposing to put into evidence or ask questions about
24 something that is not properly admissible.

25 I want you to understand that when I have

1 cs20

2 sustained an objection to a question or when I have
3 overruled an objection to a question, that doesn't
4 indicate any attitude of mine towards the case. What
5 it means, and the only thing it means, is that if I have
6 sustained an objection or told you to disregard the
7 information, you are to disregard the question or the
8 answers, as the case may be, and where I have ruled against
9 the question, not to try and figure out what a witness
10 might have answered if he had been allowed to do so.

11 Now, ladies and gentlemen, that I have instructed
12 you as to the manner in which you should consider the
13 evidence and since you have heard long summaries of the
14 respective contentions of the lawyers, I will turn to the
15 substance of the charges against Mr. Sansone and Mr. Fuentes.

16 The indictment, as you know, contains two
17 counts. Each count, as I mentioned before, is a separate
18 offense and each must be considered separately by the
19 jury.

20 Count 1 charges a conspiracy between the defend-
21 ants or between the defendants and others not named, and
22 is called a conspiracy count.

23 Count 2 charges Mr. Sansone alone with actually
24 violating the laws relating to the control of narcotic
25 substances and is called the substantive count.

cs21

I will deal first with the conspiracy charge, both because it comes first in the indictment and because the discussion may take a little bit longer.

Before you may convict either defendant under a conspiracy charge, you must find that the Government has proven beyond a reasonable doubt all three of the following elements. I repeat that the Government must prove all of the following factors:

First, the existence of the conspiracy charged. Obviously nobody can be guilty of belonging to a conspiracy unless there was a conspiracy as charged in the indictment.

Second, that the defendant whose guilt or innocence you are considering at the time knowingly and wilfully joined the conspiracy.

Third, that at least one of the conspirators committed at least one of the so-called overt acts mentioned in the indictment and which I will tell you more about shortly.

If the Government fails to establish any one of those essential elements beyond a reasonable doubt as to either defendant, then you must acquit that defendant on Count 1. On the other hand, if it succeeds in proving all of those things as to a particular defendant, then of course it is your duty to convict that defendant

1 cs22

2 on count.

3 Now, as I have said, the gist of the crime
4 of conspiracy is an unlawful agreement to violate the
5 law.

6 Ladies and gentlemen, I get worried sometimes
7 about the instructions which we judges give about con-
8 spiracy, because I think sometimes we instruct the jury
9 to fare-thee-well, and I hope I don't do that today.
10 There are a lot of things that is important for you to
11 know, but what you need to remember as you are mooring for
12 the discussion about conspiracy is that a conspiracy is
13 nothing more nor less than an agreement of two or more
14 people, of course an intentional and knowing agreement to
15 violate the law, and if you bear that in mind I think
16 all of the other aspects of the instructions will be much
17 clearer to you.

18 Whether or not the defendant or defendants
19 accomplished what it is alleged that they and others
20 conspired to do is immaterial to the question of guilt
21 or innocence in regard to a conspiracy. A conspiracy
22 need not be successful in order to constitute an illegal
23 act or crime. It is the very conspiracy or agreement
24 itself together with at least the commission of one overt
25 act that creates the crime.

1 cs23

2 Since a conspiracy is by definition an agree-
3 ment between or among people to violate the law, each
4 member, once you are satisfied that somebody became a
5 member of the conspiracy, becomes the agent of every other
6 member.

7 I want to comment on that point:

8 You may remember that early in the trial and
9 during the course of the trial I have several times
10 explained to you that it was not always possible to put
11 the evidence in any particular order that might be ideal,
12 and that some evidence might be put in as to a statement
13 with regard to defendant X or by defendant X which might
14 apply to defendant Y, but that it could only be applied
15 to defendant Y if you found on independent evidence against
16 defendant Y that he, indeed, was a member of the conspiracy.

5 17 I want to remind you of that instruction again
18 and I will shortly give you an instruction as to how you
19 are to determine whether a defendant should be adjudged
20 to have become a member of the conspiracy or not.

21 Now, coming to the nature of the conspiracy itself,
22 to establish the existence of a conspiracy the Government
23 is not required, of course, to show that two or more
24 people sat around a table and entered into a solemn agree-
25 ment orally or in writing saying that they were forming a

1 cs24

2 conspiracy. Common sense makes it clear that when
3 people decide to enter into a criminal conspiracy they
4 are not going to announce it publicly or openly.

5 It is sufficient if the Government establishes
6 to your satisfaction beyond a reasonable doubt that two
7 or more people named in this indictment as defendants or
8 as co-conspirators came to a common understanding to
9 violate the law. Particular language or specific words
10 are not required to indicate attachment to a conspiracy,
11 nor is it required that you find that all of the con-
12 spirators alleged in the indictment joined in the con-
13 spiracy in order to find that the conspiracy existed, but
14 obviously you must find at least two people did, or you
15 can't have a conspiracy.

16 Now, an aside on that, ladies and gentlemen.
17 There are only two defendants in this case and they are
18 the ones clearly who are principally charged with having
19 conspired together, and I believe the Government funda-
20 mentally puts that proposition before you. However, I do
21 point out that the indictment charges that the defendants
22 conspired not only with each other but among themselves
23 and others not named in the indictment.

24 The offense of conspiracy is complete when the
25 unlawful agreement is made and any single overt act to

1 cs25

2 effect the object of the conspiracy is thereafter com-
3 mitted by at least one of the conspirators.

4 Of course, proof that the conspiracy actually
5 has been accomplished may be the most persuasive evidence
6 that the conspiracy actually existed, and if you believe
7 that the venture alleged here was successful, the success
8 itself would be very good proof, of course, of existence
9 of the conspiracy.

10 If upon consideration of the evidence you
11 find beyond a reasonable doubt that the minds of two of
12 the alleged conspirators met in an understanding, then
13 proof of existence of the conspiracy is complete.
14 That is the first element which the Government must
15 establish.

16 Now let's talk about the second element which
17 the Government must prove, that is, membership in the
18 conspiracy, individual membership. You cannot find
19 either of the gentlemen here on trial guilty of Count 1
20 unless you find that that particular defendant wilfully and
21 knowingly joined the conspiracy. Let's be more specific.
22 If you conclude that the conspiracy charged in the indict-
23 ment existed, you must next determine whether the defendant
24 whose case you are considering participated in the con-
25 spiracy with knowledge of its unlawful purpose and in

1 cs26

2 furtherance of its unlawful objectives.

3 Thus, mere knowledge by either defendant of
4 the existence of the conspiracy or of any illegal act
5 on the part of the alleged co-conspirators or mere associ-
6 ation with a conspirator is not sufficient in itself to
7 establish membership in the conspiracy.

8 The Government must establish beyond a reason-
9 able doubt that the defendant in question was aware of the
10 basic purpose of the conspiracy and that he entered it
11 with specific intent of violating the law.

12 Now, whether or not a particular defendant was
13 a member of the conspiracy or joined the conspiracy must
14 be determined, as I said before, on the evidence as to
15 his own actions and not those of someone else.

16 The guilt of a co-conspirator, if you find
17 that there was a conspiracy and he did join it, is not
18 governed by the extent or duration of his participation in
19 the conspiracy or whether he had knowledge of all its
20 operations. Even if one joined the conspiracy after it
21 was formed and was engaged in it to a degree more limited
22 than that of some other co-conspirator, he may still be
23 found guilty of conspiracy.

24 Ladies and gentlemen, we now come to the last
25 element which the Government must prove as to the con-

cs27

1
2 spiracy charge. Assuming that you find that the con-
3 spiracy existed and that the defendant in question was a
4 member of the conspiracy, then it must nevertheless be
5 demonstrated that one of the co-conspirators committed at
6 least one of the overt acts charged in the indictment.

7 Among the overt acts charged in the indictment,
8 and you will have the indictment to look at yourselves if
9 you wish, for example, are that:

10 "On or about the 23th day of May 1976 in
11 the Southern District of New York Frank Joseph
12 Puentes, the defendant, gave to another individual
13 approximately .36 grams of cocaine in the vicinity
14 of Ninth Avenue and 44th Street, New York, New
15 York, as a sample of the future sale of five kilo-
16 grams of cocaine."

17 The second alleged overt act is that:

18 "On or about the 4th day of June, 1976 in
19 the Southern District of New York Carmello Sancone,
20 also known as Michel, the defendant, met with an
21 agent of the Drug Enforcement Administration in the
22 vicinity of the Market Diner, 43rd Street and Eleventh
23 Avenue and had a conversation concerning the sale
24 of approximately one-half kilogram of cocaine."

25 Now, the purpose of requiring proof of at

cs28

1 least one overt act is not inconsequential. It is that
2 while parties may conspire and agree to violate the law
3 they could and they do change their minds and do nothing
4 to carry out that plan. That is a possibility. In
5 such a case no crime would be committed. You and I can
6 sit here and plan to blow up the Capitol of the United
7 States, for example, and talk about it for days on end,
8 but if we never do anything about that may not be a
9 crime. The moment, however, one of us does something in
10 furtherance of the crime or the agreement, then the crime
11 of conspiracy is complete.
12

13 It is true that overt acts elicited in an
14 indictment often are not criminal in themselves, although
15 they often are. That does not mean, however, that
16 an action taken may not have sufficient weight to be in
17 furtherance of a crime. If, for example, I phone
18 you in connection with our alleged plan to blow up the
19 Capitol of the United States and suggest that we meet at
20 a certain time and place, while I may be perfectly normal
21 and not criminal to telephone people, the act which I
22 have asked would be an act in furtherance of the con-
23 spiracy.

24 The Government is not required to prove that
25 each member of the conspiracy committed or participated in

cs29

any particular overt act, since the act of any one conspirator, done in furtherance of the conspiracy, becomes the act of all other members of the conspiracy.

Moreover, the Government is not required to prove that each of the listed overt acts actually occurred. It is sufficient if it proves the commission of one of the overt acts by one of the co-conspirators.

Ladies and gentlemen, while the indictment before you charges that the conspiracy ran from on or about May 1, 1976 to the 26th of August, 1976, it is not essential that the Government prove that the conspiracy started and ended precisely on the specified date. It is sufficient if you find that in fact a conspiracy was formed and existed for some time within the period within the indictment itself and that at least one of the overt acts was committed in furtherance of the conspiracy during that period.

Now, ladies and gentlemen, I finished instructing you as to the conspiracy count and I will proceed to discuss Count 2 of the substantive count. The statute or law passed by Congress, which Mr. Sansone is alleged to have violated in regard to Count 2, is Section 841 of Title 21 of the United States Code, which reads in pertinent part -- that is, the part we are concerned with -- as

1 cs30

2 follows:

3 "It shall be unlawful for any person knowingly
4 or intentionally to distribute or to possess with
5 intention to distribute a controlled substance."

6 Before you can find Mr. Sansone guilty of the
7 crime charged in Count 2 you must find that the Government
8 has proven beyond a reasonable doubt all of the following
9 three elements:

10 First, that on or about the date set forth
11 Mr. Sansone distributed or possessed with intention to
12 distribute a narcotic drug controlled substance;

13 Second, that he did so unlawfully, wilfully
14 and knowingly; and

15 Third, that the substance which he possessed
16 was in fact a narcotic drug controlled substance.

17 I want to say something a little further about
18 these three elements.

19 The first is to distribute a drug or possess it
20 with intention to distribute it.

21 What do those phrases mean? Well, the word
22 distribute means an actual or constructive or attempted
23 transfer.

24 The word "possess" has its common every-day
25 meaning, that is, to have something within your control,

cs31

not necessarily in your hand or pocket. Control may be demonstrated by the existence of a working relationship between the person having the control and the person who has actual physical custody.

The word "intent", of course refers to a person's state of mind.

So, putting it all together, the term "possess with intent to distribute", means to control an item with the purpose of transferring it.

If you find beyond a reasonable doubt that Mr. Sansone actually made a transfer of the narcotic drug controlled substance, that finding would, of course, satisfy this requirement of the crime. Moreover, if the proof shows that Mr. Sansone merely possessed or controlled a narcotic drug controlled substance but possessed it with the intent of distributing it, that finding would also satisfy the requirements of this element of the offense.

The second element of the offense charges, of course, and not surprisingly, that a defendant cannot be found guilty unless you find his distribution or possession with intention to distribute was unlawful and wilfull and knowing. Those words mean that you must be satisfied beyond a reasonable doubt that Mr. Sansone knew what he was doing; that he did it deliberately and volun-

1 cs32

2 tarily and not mistakenly or accidentally or as a result
3 of coercion.

4 For example, if you sold somebody some packets
5 of what you thought were granulated sugar and they turn
6 out to be cocaine or heroin, you would not be guilty of a
7 crime even though you would literally have distributed a
8 narcotic drug controlled substance.

9 Of course, it is not necessary that Mr. Sansone
10 knew that he was violating any particular law. It is
11 sufficient if you are convinced beyond a reasonable doubt
12 that he was aware of the nature of his acts and the
13 general unlawful nature of them.

14 As to the third element, the substantive count
15 charged that the narcotic drug controlled substance in this
16 case was either heroin or cocaine. It does not charge
17 anything about heroin, just cocaine. I instruct you
18 as a matter of law that cocaine is a narcotic drug con-
19 trolled substance. You, however, must still find
20 beyond a reasonable doubt that the substances in question
21 in the count charged was cocaine. With respect to this
22 matter you should remember that counsel have stipulated
23 that if the Government chemist were called to testify he
24 would testify that the Government exhibits placed before
25 you contain cocaine in varying amounts and varying

1 cs33

2 standards of purity.

3 Ladies and gentlemen Mr. Sansone has inter-
4 posed a defense of what is called entrapment. The word
5 "entrapment" is a legal term. It has a technical meaning
6 which is different from that of popular speech or ordinary
7 usage. Therefore, I will explain the word and the
8 meaning of entrapment as it is used in the law.

9 The defense of entrapment is based upon a
10 policy that law enforcement agencies cannot be allowed
11 to manufacture crime. They cannot lead innocent people
12 into committing a crime simply in order to prosecute them.
13 But a line must be drawn, of course, between the entrapment
14 of the unwary innocent and the trap for the unwary criminal.

15 The question of entrapment involves two issues
16 and should be considered by you in two stages. It is
17 important that you realize this during your deliberations.

18 The first element you are to consider is
19 whether Mr. Sansone was induced to commit the crime by
20 anyone acting for the Government; in this case, by Hugo
21 or Mr. Schnakenberg. It is an essential feature of the
22 defense of entrapment that the idea of design of committing
23 the crime originates with the law enforcement officer and
24 not with the defendant.

25 The first question you must ask is who initiated

cs34

the criminal transaction involved in Counts 1 and 2?

Did Hugo or Mr. Schnakenberg initiate the transactions in this case? Did they propose or suggest it? Or did

Mr. Sansone initiate the criminal transaction involved in this case? Did he propose or suggest it?

I instruct you that before you may consider the defense of entrapment which has been raised by Mr. Sansone you must find that Mr. Sansone has adduced some evidence that Hugo or Mr. Schnakenberg initiated the initial conduct and thereby persuaded Mr. Sansone to commit the offense.

If you do not find such inducement there can be no entrapment. If you are satisfied by the Government's proof as to the lack of inducement, then there is no entrapment as a matter of law and that is the end of the inquiry.

If, however, you are satisfied from a review of the record that Mr. Sansone has produced evidence that the Government initiated the criminal transaction, then you must consider the second issue, that is, did the Government prove beyond a reasonable doubt that the inducement, if it existed, was not the cause of the crime, but rather that Mr. Sansone was ready and willing in any event to commit the crime.

The defense of entrapment is not simply that the Government initiated the criminal transaction. Thus, if a person has a readiness and willingness to break the law, the mere fact that a Government agent provides a favorable opportunity for the commission of a crime is not a defense. In such case the Government has certainly not led an innocent person astray, but has only provided the means by which a defendant may realize his already pre-existing purpose.

If you find by a preponderance of the evidence that Mr. Sansone's acts were not willing and voluntary or that he was entrapped, as I defined entrapment a few moments ago, then you must find him not guilty.

If, on the other hand, you find that the Government has proved each element of either of the crimes charged beyond a reasonable doubt, and you do not find by a preponderance of the evidence that Mr. Sansone was entrapped, then you must find Mr. Sansone guilty on the count or counts on which you find the Government has proven its case.

Ladies, and gentlemen, in every criminal case there is a fundamental rule which every defendant has the right to rely on. That is the rule that the defendant may not be compelled to take the witness stand or offer

1 cs36

2 any testimony at all. Pleading not guilty, a defendant
3 has in effect denied every material issue against him
4 stated in the indictment. It is the prosecution which
5 must prove him guilty and he cannot be required to disprove
6 anything.

7 An accused person has a right to take the
8 stand or to stand mute. The fact that he does not take
9 the stand, as the defendants in this case have not, may
10 not be considered by any of you as any indication of guilt
11 as to them or any admission on their part or any inference
12 of guilty.

13 That is not just an artificial rule. If you
14 were accused of crime you would feel there is no reason for
15 you to prove yourself innocent. However thoroughly you
16 would be convinced of your innocence, or knew of it, you
17 would understand that it is the Government's job to prove
18 you guilty, if it could.

19 Ladies and gentlemen, I have come nearly to the
20 end of my formal instructions, but in a sense the most
21 important part of what I have to say is coming now. That
22 is with regard to your role as jurors, because it is for
23 you and you alone to decide whether either of the defendants
24 on trial here is guilty of either of the counts as charged.

25 I know that you will try the issues that have

1 6537

2 been presented to you in accordance with the solemn
3 oath that you took as jurors in which you promised that
4 you would well and truly try the issues joined in this
5 case, and as you probably remember from my repeating it
6 time after time when I was impaneling the jury, based solely
7 on the evidence which you have had put before you in this
8 trial and the instructions as to the law which I am now
9 giving you, render a true and just verdict.

10 I like that phrase "well and truly try the issue
11 joined in this case." It goes back a thousand years
12 and its old-fashioned flavor should mean something to you
13 and remind you of the hundreds of thousands of juries who
14 have performed this function before you and that you must
15 a true verdict render based upon the evidence you have
16 heard in this court and the exhibits.

17 In order for you to reach a verdict, either not
18 guilty or guilty, as to either defendant your verdict must,
19 of course, be unanimous; that is, everybody must agree on
20 that particular verdict. In spite of the requirement
21 of unanimity, each of you, however, must decide each count
22 as to the defendant in question individually, in accordance
23 with your own conscience, but only after deliberation
24 with your fellow jurors to determine whether you believe
25 a just verdict is being reached.

D28

1 cs33

2 You must not hesitate to change your mind
3 you become convinced that your original view of the case
4 did not accord with the facts or the law or whatever it is.
5 On the other hand, you should not change your view just
6 for the purpose of reaching a verdict as a matter of con-
7 venience.

8 I really have no reason to believe that this
9 jury won't be able to reach a unanimous verdict one way or
10 the other as to the matters put before it.

11 To sum up, if you find that there is a reason-
12 able doubt that the law has been violated as to either
13 defendant on any count, you shouldn't hesitate for any
14 reason to acquit that defendant on that count. On the
15 other hand, if you find that the law has been violated
16 and the Government has proven it beyond a reasonable doubt
17 as charged, you shouldn't hesitate because of sympathy or
18 for any other reason to render a verdict of guilty as to
19 that defendant on that count.

20 Nothing I have said in these instructions, and
21 I stress this, is intended to indicate my view or mine
22 towards how the various issues put before you should be
23 decided.

24 Ladies and gentlemen, according to custom,
25 Juror No. 1 normally acts as foreman of the jury in this

cs39

court, and I am going to ask Mr. Hilkey to do so in this case. That does not mean that he will have any authority that the rest of you don't have, but simply that he will assist in seeing to it that your deliberations are orderly and that all communications to the Court are properly made.

You have the right at any time, ladies and gentlemen, to ask for the exhibits, or any one of them; you have the right to have any of the testimony read to you or any of the tape exhibits played if you should wish, but I can't say that I encourage you to do that. You have the right to put any questions that you want to the Court.

If you do wish to have any testimony read back to you, or any exhibit, it would be very helpful if you will be as specific as possible about the material that you are interested in so that we can be assisted in locating that material in advance.

Of course, the way you get in touch with the Court will be to give a note to the Marshal who will be standing outside the door of your jury room. I am neither encouraging or discouraging your asking for anything, but certainly you have the right to have anything you wish.

It is not my practice, ladies and gentlemen, to send in all the exhibits, plunk them down on the jury room table and leave them there. However, if you prefer,

1 cs40

2 when you start your deliberations to have all the exhibits
3 before you, all you have to do is write a note saying so.
4 If, on the other hand, you just want a particular exhibit,
5 you can ask for that.

6 I will also say, because sometimes a jury asks,
7 that the Judge's charge I have just given you will not be
8 sent in to you. I hope it has been clear, but if it has
9 not been clear, then I'm afraid it will be less clear if I
10 sent it in to you and you all tried by yourselves to figure
11 out what it meant.

12 If you do have any questions about what my
13 charge is or what the law is, simply write me a note saying
14 that you have a question and come on out and tell me what
15 your question is, or specify the question in your note,
16 and it will be answered.

17 Now, ladies and gentlemen, I have come to the
18 end of my instructions. I want to meet briefly with
19 counsel in the robing room to see if they think any point
20 needs clarification.

21 I should say I will arrange to have sandwiches
22 and drinks brought in so that you can have lunch in today
23 so that your deliberations can proceed as smoothly as
24 possible and not to have to go out in this area.

25 Counsel will please come with me into the



ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

MQC:isk

United States Department of Justice

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

ONE ST. ANDREW'S PLAZA

NEW YORK, NEW YORK 10007

November 5, 1976

Stuart R. Shaw, Esq.
600 Madison Avenue
New York, New York 10022

Re: United States v. Carmello Sansone
76 Cr. 835 (MEL)

Dear Mr. Shaw:

Following is a list of the potential witnesses
for the Government in the captioned matter:

- | | |
|-------------------------|--------------------------------|
| 1. Henry Klein | 17. G. Hammonds |
| 2. Peter Culver | 18. William Manning |
| 3. William McMullan | 19. James Jones |
| 4. William Schnakenberg | 20. Michael Levine |
| 5. Kevin Finnerty | 21. Thomas Byrne |
| 6. Steve Moran | 22. Edward Manning |
| 7. Helmit Witt | 23. Gerald Smith |
| 8. Lawrence Burstein | 24. Conrad Armieri |
| 9. Dennis Nargi | 25. Francesca Rona |
| 10. James Greenan | 26. Gustavo Hoffman |
| 11. Joseph Sullivan | 27. New York Telephone Company |
| 12. Michael Powers | 28. Hugo Saito |
| 13. Curtis Fillmore | 29. Alan Levine |
| 14. Michael Pavlich | 30. Jane Parver |
| 15. Michael Kane | 31. Landlord - 357 West 43rd |
| 16. Richard Bell | Street, New York, N.Y. |

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By: 

MICHAEL Q. CAREY

Assistant United States Attorney
Telephone: 791-0068



E1

MQC:isk

Stuart R. Shaw, Esq.

-2-

November 5, 1976

cc: Honorable Morris E. Lasker
United States District Judge
Southern District of New York
Chambers 1903
United States Courthouse
Foley Square
New York, New York 10007

Milton Rosenberg, Esq.
401 Broadway
New York, New York 10013

E2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

- against -

76 Cr 835 (MEL)

FRANK PUENTES and CARMELLO
SANSONE a/k/a "Michel",

NOTICE OF MOTION

Defendants.

-----X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed Affidavit of STUART R. SHAW, sworn to the *16th* day of December, 1976, and upon all of the proceedings had herein, the undersigned will move this Court before the Honorable Judge Morris E. Lasker, at *(CHAMBERS, ROOM 1903)* the United States Courthouse, Foley Square, New York, New York on the 4th day of January, 1977, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for the following post-trial relief:

An Order appointing an Italian or French speaking psychiatrist to examine defendant, CARMELLO SANSONE, in order to make an accurate determination of his competency and an adjournment of the sentencing in order to conduct said examination, and for such other and further relief as this Court may deem necessary, proper and in the interests of justice.

Dated: New York, New York
December *16th*, 1976.

TO: HON. MORRIS E. LASKER

HON. ROBERT B. FISKE, JR.
U.S. Attorneys Office SDNY
U.S. Courthouse Annex
One St. Andrew's Plaza, NY, NY
Attn: AUSA Michael Carey

Yours etc.,
STUART R. SHAW
Attorney for Deft. SANSONE
Office & P.O. Address
600 Madison Avenue
New York, New York 10022
(212) 755-5645

F1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

- against -

76 Cr 835 (MEL)

FRANK FUENTES and CARMELLO
SANSONE a/k/a "Michel",

AFFIDAVIT

Defendants.

-----x
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

STUART R. SHAW, being duly sworn, deposes and says:

1. I am the attorney for defendant, CARMELLO SANSONE, appointed pursuant to the Criminal Justice Act.

2. I make this affidavit in support of the annexed Notice of Motion requesting this Honorable Court to order that CARMELLO SANSONE be examined by psychiatrists who speaks French and/or Italian, SANSONE'S "first" and/or "Second" language.

3. It is a matter of record that CARMELLO SANSONE has been supplied interpreters to translate to him from English to French, Italian and/or Spanish because his English is so poor.

4. I respectfully request that judicial notice be taken of a recent article in the American Journal of Psychiatry entitled, The Influence of Language Upon Symptomology in Foreign-Born Patients (see Exhibit A, attached hereto).

5. CARMELLO SANSONE'S rights under the Due Process

Clause and the Equal Protection Clause of the United States Constitution will be violated if this request is not granted (see attached Memorandum of Law).

6. Scientific evidence, logic and common sense support the contention that only a psychiatrist who can speak in the language of the patient can accurately diagnose that patient in regard to his mental and emotional state.

7. Your deponent has had difficulty communicating with his client in the past and respectfully contends the relief requested herein is necessary, proper and in the interest of justice.

WHEREFORE, your deponent respectfully requests this Honorable Court to issue a post-trial Order appointing a French and/or Italian speaking psychiatrist to examine CARMELLO SANBONE.

STUART R. SHAW

Sworn to before me this

16th day of December, 1976.

Notary Public

CONSTANCE M. AFRICA
Notary Public, State of New York
No. 00276630
Qualified in Orleans County
Commission Expires March 30, 1978

The Influence of Language Upon Symptomatology in Foreign-Born Patients

BY JULIO C. DEL CASTILLO, M.D.

During my extended and rather intensive experience in the forensic unit of the New Jersey State Hospital at Trenton, working with the "criminal insane" in both male and female sections of that division, I have observed on many occasions that patients of foreign extraction, mainly Spanish-speaking people about whom I can testify better, appear obviously psychotic during the interview with the psychiatrist held in their mother tongue but seem much less so, and even may not show any overt psychotic

symptoms at all, if the interview is conducted in English. This is corroborated during their presentation to the staff, which is also held in this language, or when interviewed individually in English. I advised my colleagues about this observation and gave them evidence to support it. They listened with solicitude and interest but after further observation they found that the patients showed no or only slight psychotic behavior.

I would like to give a few hints about my own views on the phenomenon, repeating that no attempt is made in this brief article to establish a formal hypothesis or to develop a definite theory.

I believe that a foreign-born individual who thinks and dreams in his own language will, if he becomes psychotic, distort reality in his own native thoughts and language; that he may associate freely, being dominated by his unconscious mind and not disturbed while talking in his mother tongue. A language not his own, in which he has to make an effort to understand and to respond, can act as a stimulus that shakes him up, makes him think, and puts him in better contact with reality.

It should also be noted in this connection that "normal" foreign people swear in their native tongue, as they wish to relieve their unconscious of their anger and frustrations. The writer can attest to this observation from his own personal experience.

There follow several clinical cases that show typical patterns that may serve as examples.

Amer. J. Psychiat. 127:2, August 1970

Case Reports

Case 1. J.S. was a 30-year-old Puerto Rican male patient charged with murder. At the beginning of his hospitalization he was obviously psychotic in both English and Spanish. During his hospitalization, which lasted several months, he received intensive and active psychiatric care, including a series of 29 electrotherapy treatments. By the end of his hospitalization he was examined by an outside expert, a renowned English-speaking psychiatrist, who found him able to stand trial.

The patient then had a sanity hearing. I was there as an expert witness. At the hearing it was obvious that when questioned by the prosecutor, the lawyer, and the judge, the patient was coherent and relevant, giving proper answers to the questions. Before, during, and after the trial I spoke with my patient in Spanish, and whenever his delusions were touched upon he showed signs of severe mental disorganization, unsystematized delusional symptoms, a pathological degree of anxiety, and periods of talking in a rambling, disconnected fashion.

In his testimony the English-speaking psychiatrist said the patient was coherent and relevant; the patient gave coherent answers and showed calm behavior during his interrogation in the sanity hearing, and the judge, who had temporarily interrupted the proceedings, reached the conclusion a few days later that J.S. was "sane enough" to stand trial.

Case 2. R.A. was a 28-year-old Cuban patient charged with murder. During his rather lengthy hospitalization he was under the care of a Spanish-speaking physician who found him to be psychotic, suffering from terrifying imaginary experiences. Occasionally he was interviewed by an English-speaking psychiatrist, in whose judgment the patient was coherent, factual, and free from overt psychotic manifestations. I was asked to evaluate his mental status on a few different occasions and encountered exactly what the other Spanish-speaking physician had found.

EXHIBIT "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

-v- :

CARMELLO SANSONE, :

Defendant. :

ORDER PURSUANT TO
18 U.S.C. §4244

76 Cr. 835 (MEL)

-----x

Upon the motion of Carmello Sansone, the defendant, by Stuart R. Shaw, his attorney, by letter dated November 19, 1976, and upon the consent of Robert B. Fiske, Jr., United States Attorney, Southern District of New York, by Michael Q. Carey, Assistant United States Attorney, and pursuant to Title 18, United States Code, Section 4244, it is hereby

ORDERED that Dr. Stanley Portnow, 823 Park Avenue, New York, New York 10021, a qualified psychiatrist, be employed to examine Carmello Sansone, the defendant, to determine whether defendant as of the period November 9, 1976 through November 22, 1976, was, and whether defendant is presently, insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, including sentencing proceedings, and it is hereby further

ORDERED that Dr. Stanley Portnow be permitted to visit and interview defendant at the Metropolitan Correction Center, Park Row, New York, New York, at a time mutually agreeable to the doctor and the warden, for the purpose of conducting such examination, and it is hereby further

ORDERED that the doctor prepare a written report of his findings and conclusions, including his prognosis and that the original of said report be submitted to the Honorable Morris E. Lasker, United States District Judge,

Chambers 1903, United States Courthouse, Foley Square,
New York, New York 10007, on or before December 17, 1976,
copy to the United States Attorney, Southern District of
New York, One St. Andrew's Plaza, New York, New York 10007
Attention: Michael Q. Carey, Assistant United States
Attorney, and a copy to Stuart R. Shaw, Esq., 600 Madison
Avenue, New York, New York 10022, and it is hereby further

ORDERED that the United States Attorney for the
Southern District of New York be directed to pay a reasonable
fee for the services of Dr. Stanley Portnow not to exceed
the sum of Sixty (\$60.00) Dollars per hour..

Dated: New York, New York

December 2, 1976

B. Morris E. Jasker
U. S. D. J.

STANLEY L. PORTNOW, M.D., P.C.
823 PARK AVENUE
NEW YORK, N. Y. 10021
BUTTERFIELD 8-1877

December 24, 1976

Hon. Morris F. Lasker
United States District Judge
Chambers 1903, United States Court House
Southern District of New York
Foley Square, New York 10007

RE: U.S. v. Carmello Sansone
76 Cr 835 (MFL)

cc: Michael Q. Carey, Asst. U. S. Attorney
Stuart R. Shaw, Esq.

Dear Judge Lasker:

Pursuant to a request by Assistant U. S. Attorney Michael Q. Carey and your court order dated December 2, 1976, I undertook a psychiatric examination of Mr. Carmello Sansone in order to determine whether he was during the period November 9, 1976 through November 22, 1976 and whether he presently is insane or otherwise so mentally incompetent as to be unable to understand the processes against him or to properly assist in his own defense.

HISTORY: Carmello Sansone was born on September 10, 1912. He has two brothers and one sister. His mother allegedly died of paralysis in Algiers in 1939. The defendant and his family left New York City in 1914 for Italy, where his father joined the Italian Army. He grew up with his mother in Tunisia and Algiers and has never known the whereabouts of his father. He attended the French School for only a few years and at age fifteen began work as a brick layer. After his mother's death in 1939 he went to Paris. He was unable to escape Paris before the arrival of German troops and was sent to a concentration camp in the area of Berlin, Germany. He returned to Paris in 1945 and went to the American Consulate in order to get papers to enable him to come to the United States as an American citizen. He arrived in 1948 and joined a brick laying union. He worked until 1951, when he was arrested for conspiracy involving drugs and spent one year at the federal prison in Atlanta, Georgia. Following his release, he lost his union book and held various odd jobs until 1960, when he was again arrested on a drug conspiracy charge. He claims that it had to do with a U. S. - French drug transaction, but offers no further information. He served eight years and twenty days of a twelve year sentence in Leavenworth, Kansas. He did odd jobs from 1960 to 1976, when he was once again arrested. Mr. Sansone has a common law wife whom he has been with for eight or nine years. He claims to have contracted syphilis about forty years ago, for which he was initially treated in Marseilles. At the Metropolitan Correctional Center his serology report is active for syphilis.

Mr. Sansone reports that he is charged with conspiracy involving half a kilo of cocaine: "They say I introduced Frankie to Ugoo" (whom he describes as a steel pigeon). He says that the authorities allege that his charge has to do with a cocaine transaction seven or eight months ago on West 16th Street, New York City, at about nine or ten p.m. Mr. Sansone states that he has an attorney, but that he has had little contact with him and does not know his name.

BEST COPY AVAILABLE

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He understands the function of a judge to be to list the evidence and the functions of the district attorney to be to talk against him. The function of a jury is to "find me guilty." He believes that he may get a ten to fifteen year sentence if convicted.

PSYCHIATRIC STATUS: Mr. Sansone is oriented to time, place and person. He knows that the date is December 11, 1976; that his full name is Carmello Sansone; and that he is in a federal prison, although he cannot name it. His affect is appropriate to his thought content. His speech is logical, but not always coherent or relevant due to a heavy Italian-French accent and his selective and sometimes inability to understand me. His thinking is neither tangential nor circumstantial. He denies auditory hallucinations (voices) or delusions. He is apparently deaf in his right ear. He is able to perform simple arithmetic tasks: the sum of $10 + 10 = 20$; the product of $10 \times 10 = 100$; if he paid for \$1.89 worth of groceries with two \$1.00 bills he would receive 11¢ in change. When asked to list the Presidents of the U. S. in proper reverse sequence, he listed Ford-Johnson-Eisenhower. His judgement is questionable. If he were to find a stamped, addressed envelope on the street, he would "give it back." If he were the first to notice a fire break out in a crowded theatre, he would "go away." His memory for recent and remote events is apparently unimpaired. He is unable or unwilling to subtract serial sevens, so no statement of his ability to concentrate can be made. His ability to think abstractly, as measured by proverb interpretation, would appear to be absolutely zero, although he does not give a general impression of concrete thinking. He replied "I don't know" when asked to explain two different proverbs ("Don't cry over spilt milk;" and "Every cloud has a silver lining.>").

CONCLUSIONS AND RECOMMENDATIONS: (1) There is no significant psychiatric pathology in this case to warrant a diagnosis. I strongly suspect that there may be volitional components through which Mr. Sansone attempts to make himself less understood than is necessary. (2) It is my professional opinion that the defendant, Carmello Sansone, has an adequate knowledge and appreciation of the charges which confront him and can confer with counsel in his own defense. (3) It is further my professional opinion that Carmello Sansone during the period of November 9, 1976 through November 22, 1976 was not insane and is presently for sentencing purposes not insane. He is perfectly able to address the court at the time of sentencing if he so desires.

Very truly yours,

Stanley L. Portnow, M.D., F.A.P.A.
Diplomate, American Board of Psychiatry and Neurology
Psychiatric Consultant, American Bar Association
Committee on Psychiatry and the Criminal Law

SLP:dj
Enc

December 30, 1976

Hon. Morris E. Lasker
United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York 10007

Re: U.S. v. Sansone
76 Cr 835 (MEL)

Dear Judge Lasker:

I am writing to you in regard to the report I received from Stanley L. Portnow, M.D. in regard to my client Carmello Sansone. I have read the report carefully and for the following reasons I sincerely believe that it would be in the best interest of my client, justice, and that it would serve to remove any and all reasonable doubts in the minds of the prosecution, court and defense if Dr. Fleetwood were ordered to do a psychiatric examination of Mr. Sansone in his native tongue and be remunerated in the same manner as Dr. Portnow was for his work. The reasons that I base my request on are as follows:

Dr. Portnow states "Mr. Sansone states that he has an attorney, but that he has had little contact with him and does not know his name." Your Honor must realize that I have seen Mr. Sansone on numerous occasions in the M.C.C. with interpreters (your Honor signed the interpreters vouchers) and that I was present in Court with Mr. Sansone at trial for at least a week and at sentence. If Mr. Sansone ~~will~~ does not know my name I find this incredible and if he is telling the truth he most certainly must be incompetent.

Dr. Portnow states in his report in regard to my client's

Hon. Morris E. Lasker

December 30, 1976

- Page Two -

speech that it is "...not always coherent or relevant due to a heavy Italian-French accent and his selective and sometimes inability to understand me." It is clear to me that this statement by Dr. Portnow that my client was unable to understand in and of itself necessitates a subsequent examination by Dr. Fleetwood has command not only of the English language but Spanish, Italian and French languages. In other words, the languages that Mr. Sansone speaks. Dr. Fleetwood has taught psychiatry at Cornell Medical College which is part of New York Hospital which is perhaps the finest hospital in the United States, if not the World.

Dr. Portnow also states in his report in regard to my client that "...no statement of his ability to concentrate can be made." I can only assume from said statement that Dr. Portnow no matter how well qualified as a psychiatrist could not come to a definite conclusion that would adequately permit a jurist to make a legal ruling as to Mr. Sansone's competency.

I believe that a report by Dr. Fleetwood would remove any doubt in anyone's mind in regard to Mr. Sansone's competency. I believe that only a physician who speaks the language of the patient can diagnose a patient when competency is an issue. A Chinese doctor should be able to set a broken leg as well as an American doctor even if he has a language communications problem, however, I sincerely believe that your Honor, Mr. Carey and/or myself would not rely on a Chinese psychiatrist who spoke no English if the day ever came that we had to seek psychiatric help for ourselves or a loved one. I believe Mr. Sansone is entitled to the same considerations.

Respectfully,

STUART R. SHAW

SRS:df

cc: Hon. Robert B. Fiske, Jr.
Attn: AUSA Michael Carey

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee

- against -

CARMELLO SANSONE, a/k/a
"Michel",
Defendant

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

SS.:

I, Reuben A. Shearer, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 211 West 144th Street, New York, New York 10030.

That on the 20th day of May, 19 77 at U.S. 1 St. Andrews Plaza
New York, N.Y.

deponent served the annexed

affidavit

upon
Robert Fiske
U.S. Atty-So. Dist.

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 20th
day of May, 19 77

Reuben A. Shearer

Reuben A. Shearer

[Handwritten signature]